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**Please find below and/or attached an Office communication concerning this application or proceeding.**

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* ARLEN L. ROESNER

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Appeal 2008-4745  
Application 10/647,915  
Technology Center 2800

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Decided:<sup>1</sup> March 12, 2009

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Before CHUNG K. PAK, CHARLES F. WARREN, and  
LINDA M. GAUDETTE, *Administrative Patent Judges*.

PAK, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 1 through 20, all of the claims pending in the above-identified application. We have jurisdiction under 35 U.S.C. § 6.

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<sup>1</sup> The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

*STATEMENT OF THE CASE*

The subject matter on appeal is directed to a drive loading system for computers (Spec. 1, paras. [0001] and [0002]). Details of the appealed subject matter are recited in representative claims 1, 11, and 15 reproduced below:

1. A drive loading system, comprising:

a chassis adapted to receive at lease one drive; and

a carrier adapted to support insertion of the drive into the chassis in a first direction, the carrier further adapted to move the drive in a second direction transversely relative to the first direction to engage the drive with a socket, the carrier adapted to support insertion of the drive into the chassis in a transverse orientation coplanar with the first and second directions.

11. A drive loading system, comprising:

means for receiving a drive in a first direction; and

means for supporting insertion of the drive into the receiving means in the first direction, the supporting means adapted to move the drive in a second direction transversely relative to the first direction to engage the drive with a socket, the supporting means adapted to support insertion of the drive into the chassis in a transverse orientation coplanar with the first and second directions.

15. A drive carrier, comprising:

at least one support member adapted to support insertion of a drive into a chassis in a first direction; and

an actuator coupled to the at least one support member, the actuator adapted to move the drive in a second direction transversely relative to the first direction to engage a socket within the chassis, the at least one support member adapted to support insertion of the drive into the chassis in a transverse orientation coplanar with the first and second directions.

As evidence of unpatentability of the claimed subject matter, the Examiner has proffered the following sole prior art reference:

Siahpolo                                      5,481,431                                      Jan. 2, 1996

The Examiner has rejected claims 1 through 20 under 35 U.S.C. § 102(b) as anticipated by the disclosure of Siahpolo.

### *ISSUES*

With respect to claims 1 through 14, the dispositive issue is: Has the Examiner established that Siahpolo teaches a combination of a chassis and a drive carrier which are designed to “support insertion of the drive into the chassis in a transverse orientation coplanar with the first and second directions” within the meaning of 35 U.S.C. § 102(b)?

With respect to claims 15 through 20, the issue is: Has the Examiner demonstrated that Siahpolo teaches a carrier structure capable of carrying the claimed function “insertion of the drive into the chassis in a transverse orientation coplanar with the first and second directions” within the meaning of 35 U.S.C. § 102(b)?

### *FINDINGS OF FACT*

We find that the following findings of fact are supported by at least a preponderance of the evidence.

1. Siahpolo discloses a drive loading system for a computer comprising a chassis (60) having an opening (76) adapted to receive at least one hard drive (6) having a connector (71) and a crib device (10) corresponding to the claimed carrier consists of a generally rectangular shaped box (12) for carrying and inserting the hard drive (6) into the opening (76) of the chassis

(60) (col. 2, ll. 40-60, col. 4, ll. 15-60, col. 5, ll. 36-57, and Figs. 2, 6, 7, 8A, 8B, and 8C).

2. Siahpolo discloses a handle (40) corresponding to the claimed actuator pivotally coupled to the crib device (10) corresponding to the claimed carrier (col. 3, ll. 35-53),

3. Siahpolo discloses a slotted or plug-in electrical connector (69) corresponding to the claimed socket mounted on a back wall 68 of the chassis (60) (col. 4, ll. 54-60).

4. Siahpolo discloses vertically and downwardly inserting the crib device carrying the hard drive (6) into the chassis and then rotating the handle (40) corresponding to the claimed actuator to move the crib device and hard drive to the left to engage the matching connector (71) of the hard drive to the slotted or plug-in electrical connector 69 corresponding to the claimed socket mounted on the back wall (68) of the chassis (60) (col. 6, ll. 7-33, col. 4, ll. 54-60, and Figs. 7, 8A, 8B, 8C, and 8D).

#### *PRINCIPLES OF LAW*

Under 35 U.S.C. § 102(b), anticipation is established only if “each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987).

To properly compare a prior art reference with the claims at issue, the claim must first be correctly construed to define the scope and meaning of each contested limitation. *Gechter v. Davidson*, 116 F.3d 1454, 1457 (Fed. Cir. 1997). During examination, claim terms must be given their broadest reasonable construction consistent with the Specification. *In re Icon Health*

*and Fitness, Inc.*, 496 F.3d 1374, 1379 (Fed. Cir. 2007). The Specification is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1315 (Fed. Cir. 2005).

When a claim term is written in means-plus-function format, it is interpreted as the corresponding structure described in the Specification or the equivalents thereof pursuant to 35 U.S.C. § 112, paragraph 6. *In re Donaldson*, 16 F.3d 1189, 1193 (Fed. Cir. 1994)(*in banc*). The use of the term “means” raises a presumption that the means-plus-function limitation under 35 U.S.C. § 112, paragraph 6, is intended. *Sage Prods. Inc. v. Devon Indus., Inc.*, 126 F.3d 1420, 1427 (Fed. Cir. 1997). This presumption is not rebutted unless the claims at issue recite sufficient structure for carrying out the function of such means-plus-function limitation. *Al-Site Corp. v. VSI International Inc.*, 174 F.3d 1308, 1319 (Fed. Cir. 1999).

“[T]here is nothing intrinsically wrong with [defining something by what it does rather than what it is] in drafting patent claims.” *In re Schreiber*, 128 F.3d 1473, 1478 (Fed. Cir. 1997). Yet, choosing to define a structure functionally, i.e., by what it does, carries with it a risk. *Schreiber*, 128 F.3d at 1477. As our reviewing court stated in *Schreiber*, 128 F.3d at 1478 quoting *In re Swinehart*, 439 F.2d 210, 213 (CCPA 1971):

[W]here the patent Office has reason to believe that a functional limitation asserted to be critical for establishing novelty in the claimed subject matter may, in fact, be an inherent characteristic of the prior art, it possesses the authority to require the applicant to prove that the subject matter shown to be in the prior art does not possess the characteristic relied on.

*ANALYSES AND CONCLUSIONS OF LAW*

Claim 1 requires a combination of a chassis and a carrier for inserting a drive, which are designed such that the drive can be inserted into the chassis in a transverse orientation coplanar with the first insertion direction and the second direction. Claim 11 requires the chassis and carrier structures illustrated in Figures 1 through 3 corresponding to the claimed means-plus-function limitations, which are designed to insert a drive into the chassis in a transverse orientation coplanar with the first insertion and second directions. This interpretation is consistent with page 3, paragraph [0014], of the Specification which describes inserting a drive into the chassis in a transverse orientation coplanar with the first insertion direction (26) and the subsequent direction (28) from the perspective of the insertion direction. However, as correctly pointed out by Appellant at pages 4 and 5 of the Reply Brief, Siahpolo does not teach such combination of a chassis and a carrier which are designed to insert a drive in a transverse orientation coplanar with the first insertion and second transverse directions. Nor has the Examiner demonstrated, much less explained, why Siahpolo's chassis and carrier structures are "equivalent" to the disclosed chassis and carrier structures corresponding to the claimed means-plus-function limitations recited in claim 11. It follows that the Examiner has not established that Siahpolo teaches a combination of a chassis and a driver carrier which are designed to "support insertion of the drive into the chassis in a transverse orientation coplanar with the first and second directions" recited in claims 1 through 14.

Accordingly, for the reason well articulated by Appellant at pages 4 and 5 of the Reply Brief and the reason stated *supra*, we reverse the Examiner's decision rejecting claims 1 through 14 under 35 U.S.C. § 102(b).

Claims 15 through 20, however, are on different footing. They are directed to a carrier structure only. The carrier structure has a support member coupled to an actuator, with the support member being capable of inserting a drive into a chassis in a first direction and capable of moving the drive in a second direction "in a transverse orientation coplanar with the first and second directions."

Consistent with the requirement of claim 15, Siahpolo teaches a handle (40) (corresponding to the claimed actuator) pivotally coupled to a generally rectangular box of the crib device (10) (corresponding to the claimed support member of the claimed carrier). Siahpolo teaches inserting the generally rectangular box having a drive corresponding to the claimed support member having a drive downward and then using the handle (40) corresponding to the claimed actuator to move the drive in the box to the left corresponding to the claimed second direction. Although, Siahpolo does not mention that its drive carrier is used to insert a drive "in a transverse orientation coplanar with the first and second directions," there is a reasonable basis to believe that Siahpolo's crib design is capable of performing such function since the first insertion direction of a drive is also dependent on the design of an unclaimed chassis. In other words, the Examiner has demonstrated that Siahpolo teaches a carrier structure *capable* of carrying out the claimed function "insertion of the drive into the chassis in a transverse orientation coplanar with the first and second directions." Appellant has not shown that Siahpolo's crib design does not necessarily



possess any particular structure of the claimed carrier or any particular carrier structure which cannot perform the claimed function for a given chassis design.

Accordingly, we affirm the Examiner's decision rejecting claims 15 through 20 under 35 U.S.C. § 102(b).

*ORDER*

In view of the foregoing, the decision of the Examiner is affirmed-in-part.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R § 1.136 (a)(1)(iv).

AFFIRMED-IN-PART

PL Initail:  
sld

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